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SUPREME COURT OF THE UNITED STATES

_____ Term, 1977

No. 77-38

Annie Mary Timmons,

Petitioner,

vs

Thomas O. Lawton, Jr., et al.,

Respondents.

ON MOTION FOR LEAVE TO FILE PETITION FOR EXTRAORDINARY WRITS
AND
PETITION FOR WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT AND OTHER PARTIES

BRIEF OF RESPONDENT GRIMBALL IN OPPOSITION

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INDEX

	Page
Jurisdiction	2
Question Presented	2
Statement	3
Argument	
I. Rule 30 of the Rules of the Supreme Court of the United States allows the issuance of any extraordinary writ authorized by Section 1651(a) of Title 28 of the United States Code within the sound discretion of the Court, such discretion to be sparingly exercised and only in the most extraordinary cases	8
Conclusion	11

CITATIONS

Cases:

	Page
Bankers Life and Casualty Co. v. Holland, 346 U.S. 379, 98 L.Ed. 106 (1953)	10
Deen v. Hickman, 358 U.S. 57, 3 L.Ed.2d 28 (1958)	2
Ex Parte Fahey, 332 U.S. 258, 91 L.Ed. 2041 (1947)	9
McGrath v. Timmons, __S.C.__, __S.E.2d__ (No. 77-15 filed February 11, 1977), certiorari pending __L.W.__	11
Parr v. United States, 351 U.S. 513, 100 L.Ed. 1377 (1956)	2
Platt v. Minnesota Mining and Manufacturing Co., 376 U.S. 240, 11 L.Ed.2d 674 (1964)	9
Timmons v. Lawton, et al. Civil Action No. 74-2023 (D.S.C. 1975), affirmed, No. 75-2209 (4th Cir. 1976), certiorari denied, __U.S.__, 50 L.Ed.2d 611 (1976), petition for rehearing denied, __U.S.__, 50 L.Ed.2d 800 (1977)	10

Cases: Page

Timmons v. South Carolina Tricentennial Commission, et al. and South Carolina Tricentennial Commission, et al. v. Timmons, et al., 254 S.C. 378, 175 S.E.2d 805 (1970), appeal dismissed and certiorari denied, 400 U.S. 986, 27 L.Ed.2d 435, petition for rehearing denied, 401 U.S. 949, 28 L.Ed. 2d 233 (1971) . . . 3, 10

Timmons v. South Carolina Tricentennial Commission, et al., Civil Action No. 69-1002 (D.S.C. 1969), appeal dismissed, No. 14,342 (4th Cir. 1970), certiorari denied, 400 U.S. 833, 27 L.Ed. 2d 65 (1970) . . . 10

Will v. United States, 389 U.S. 90, 19 L.Ed.2d 305 (1967) . 9

United States Code:

28 § 1651(a) . . . 8

South Carolina Statutes at Large

56 STAT. Act No. 562 at 945 (1969) 3

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JURISDICTION

For the purpose of this Brief only, the respondent Grimball assumes, without conceding, the Court's jurisdiction herein. Cf., Parr v. United States, 351 U.S. 513, 100 L.Ed. 1377 (1956); Deen v. Hickman, 358 U.S. 57, 3 L.Ed.2d 28 (1958).

QUESTION PRESENTED

Whether the extraordinary writs of mandamus or prohibition, or both in the alternative, should issue from the Court directing South Carolina Circuit Court Judge John Grimball to account for the disposition of the petitioner's unclaimed funds deposited with the Clerk of Court for Richland County, South Carolina, and thereafter disbursed in satisfaction of judgments obtained against the petitioner?

STATEMENT

The petitioner's real property was taken through a condemnation action by the South Carolina Tricentennial Commission ("Commission") for use in the celebration of the three-hundredth anniversary of the State of South Carolina. Timmons v. South Carolina Tricentennial Commission, et al., and South Carolina Tricentennial Commission, et al. v. Timmons, 254 S.C. 378, 175 S.E.2d 805 (1970), appeal dismissed and certiorari denied, 400 U.S. 986, 27 L.Ed.2d 435, petition for rehearing denied, 401 U.S. 949, 28 L.Ed.2d 233 (1971). The Commission acted pursuant to Act No. 562 of the 1969 South Carolina General Assembly in acquiring the land. 56 STAT. 945 (1969). The petitioner was offered three hundred twenty-five thousand ($325,000.00) dollars in compensation for her property but she failed to claim it.

Accordingly, on August 27, 1970, the respondent Grimball, Resident Judge of the Court of Common Pleas for Richland County, South Carolina, ordered that sum deposited with the Richland County, South Carolina,Clerk of Court. Petition, App. at 381.

Subsequently, as the record would reveal, various claims against the petitioner by her creditors and others were filed with the court and ripened to judgment. Satisfactions were had from the sum deposited so that the balance as of the last disbursement on September 8, 1976, was eight thousand two hundred forty-seven and 63/100 ($8,247.63) dollars. The record would also reveal that disbursement was made pursuant to six (6) partial distribution orders, each having been issued after duly instituted, regular judicial proceedings had been held. The six partial distribution orders can be summarized as follows:

1. On May 26, 1971, the respondent Grimball signed an order of distribution in the amount of forty-two thousand seventy-four and 06/100 ($42,074.06) dollars in payment of a foreclosure judgment obtained by the Home Federal Savings and Loan Association, Columbia, South Carolina, and in payment of a judgment for the petitioner's unpaid legal expenses.

2. On May 26, 1971, the respondent Grimball signed another order of distribution for sixty-five thousand ($65,000.00) dollars to Flora Henry Plumer, the petitioner's sister, upon the request of the petitioner through her then-attorney, John B. McGrath.

3. On October 1, 1971, the respondent Grimball signed a third order of distribution in order to satisfy a judgment obtained by Robert F. Fowlkes & Co., against the petitioner in the amount of nine thousand six hundred forty-four and 90/100 ($9,644.90) dollars.

4. On March 6, 1973, disbursement in the amount of eighteen thousand four hundred nine and 60/100 ($18,409.60) dollars was made to Arthur T. Cole who had obtained a judgment against the petitioner. The disbursement was made pursuant to the respondent Grimball's order dated January 5, 1973.

5. On May 29, 1973, the fifth partial distribution order directed the disbursement of eleven thousand five hundred seventy-eight and 48/100 ($11,578.48) dollars to the South Carolina Tax Commission.

6. Finally, on September 7, 1976, Joseph R. Moss, Special Judge for the Court of Common Pleas for Richland County, South Carolina, ordered the distribution of seventeen thousand six hundred ninety-five and 73/100 ($17,695.73) dollars to the Internal Revenue Service in satisfaction of a federal tax lien. In addition, the September 7, 1976, order directed the disbursement of eighty-eight thousand three

hundred forty-nine and 60/100 ($88,349.60) dollars to Flora Henry Plumer and the sum of six thousand ($6,000.00) dollars to the law firm of Jenkins, Perry and Pride of Columbia, South Carolina.

Thus, the record would reveal total disbursements of three hundred sixteen thousand seven hundred fifty-two and 37/100 ($316,752.37) dollars from the original amount deposited, three hundred twenty-five thousand ($325,000.00) dollars, leaving a balance of eight thousand two hundred forty-seven and 63/100 ($8,247.63) dollars.

As to the petitioner's allegations in her Petition [Petition at 148] seeking disbursement of eight thousand ($8,000.00) dollars to William F. Able, she has not demonstrated therein that she has exhausted her right to appeal to the South Carolina Supreme Court the oral order of the respondent Grimball refusing to disburse that amount

nor, indeed, has she made any showing why relief is not available to her in the courts of the State of South Carolina.

ARGUMENT

I. Rule 30 of the Rules of the Supreme Court of the United States allows the issuance of any extraordinary writ authorized by Title 28, Section 1651(a) of the United States Code within the sound discretion of the Court, such discretion to be sparingly exercised and only in the most extraordinary cases.

As hereinabove set forth in the Statement, each disbursement order followed properly instituted proceedings by the Petitioner's creditors and others resulting in valid judgments against her. The actions taken by the respondent Grimball in ordering distribution of funds held by the Richland County, South Carolina, Clerk of Court to the petitioner's creditors were entirely proper and cannot now be collaterally attacked. The time to have contested the

judgments satisfied by the petitioner's funds on deposit with the Clerk of Court has long since passed and the issuance by the Court of the extraordinary writs sought by the petitioner is clearly not a proper or justified method of contesting such judgments.

Rule 30 of the Rules of the Supreme Court of the United States provides in part:

> The issuance by the court of any writ authorized by 28 U.S.C. § 1651(a) is not a matter of right but of sound discretion sparingly exercised.

In Ex Parte Fahey, 332 U.S. 258, 91 L.Ed. 2041 (1947), the Court noted that, although it has the power to issue such writs, such remedies being extraordinary, they should be reserved for "really extraordinary causes." The Petition herein as regards the respondent Grimball manifestly does not meet that standard. See also, Will v. United States, 389 U.S. 90, 19 L.Ed.2d 305 (1967); Platt v. Minnesota

Mining and Manufacturing Co., 376 U.S. 240, 11 L.Ed.2d 674 (1964); Bankers Life and Casualty Co. v. Holland, 346 U.S. 379, 98 L.Ed. 106 (1953).

Finally, while the Court has the authority to issue extraordinary writs such as those sought by the petitioner in aid of its appellate jurisdiction, this case does not fall within the scope of that authority. The Court has heretofore repeatedly declined to allow the petitioner review whether by appeal or by certiorari. See, Timmons v. South Carolina Tricentennial Commission, et al., and South Carolina Tricentennial Commission, et al. v. Timmons, supra, Timmons v. South Carolina Tricentennial Commission, et al., Civil Action No. 69-1002 (D.S.C. 1969), appeal dismissed, No. 14,342 (4th Cir. 1970), certiorari denied, 400 U.S. 833, 27 L.Ed.2d 65 (1970), Timmons v. Lawton, et al., Civil Action No. 74-2023 (D.S.C. 1975), affirmed, No. 75-2209

(4th Cir. 1976), certiorari denied, __U.S.__, 50 L.Ed.2d 611 (1976), petition for rehearing denied, __U.S.__, 50 L.Ed.2d 800 (1977); See, however, McGrath v. Timmons, __S.C.__ (No. 77-15 filed February 11, 1977), certiorari pending, __L.W.__.

CONCLUSION

For the foregoing reasons, the respondent Grimball prays that the petition herein be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Karen LeCraft Henderson, of counsel for Respondent Grimball, and a member of the Bar of this Court, do hereby certify that in accordance with Rule 33, three (3) copies of Respondent Grimball's Brief in Opposition were served on Petitioner on this date by depositing same in the United States mail, postage prepaid, and addressed as follows: Annie Mary Timmons, Pro Se, 3104 Monroe Street, Columbia, South Carolina, 29205; said address being within five hundred (500) miles from the point of mailing.

This _____ day of July, 1977.

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